

IPW/PP

TRANSMITTAL LETTER
(General - Patent Pending)

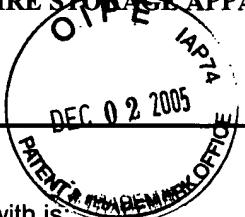
Docket No.
121046-001

In Re Application Of: **Michael LAMBRIGHT**

Application No. 10/612,254	Filing Date July 2, 2003	Examiner Gregory Adams	Customer No. 35684	Group Art Unit 3652	Confirmation No. 3335
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Title:

SPARE TIRE STORAGE APPARATUS



COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Brief on Appeal (one original and two copies)

Brief Transmittal

Fee Transmittal

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FEE TRANSMITTAL for FY 2005

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ **\$250.00**)

Complete if Known

Application Number	10/612,254
Filing Date	July 2, 2003
First Named Inventor	Michael LAMBRIGHT
Examiner Name	Gregory Adams
Art Unit	3652
Attorney Docket No.	121046-001

METHOD OF PAYMENT (check all that apply)

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fees Paid (\$)
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

		Small Entity	Fee (\$)	Fee (\$)
			50	25
			200	100
			360	180
Multiple Dependent Claims		Fee (\$)	Fee Paid (\$)	

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x \$25.00	= \$0.00	

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x \$100.00	= \$0.00	

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listing under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	0	/ 50 0 (round up to a whole)	x \$125.00	= \$0.00

4. OTHER FEE(S)

Non-English specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief Transmittal

\$250.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	32,816	Telephone	734-995-3110
Name (Print/Type)	Michael S. Gzybowski		Date	November 30, 2005	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT APPLICATION



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group
Art Unit: 3652

Attorney
Docket No.: 121046-001

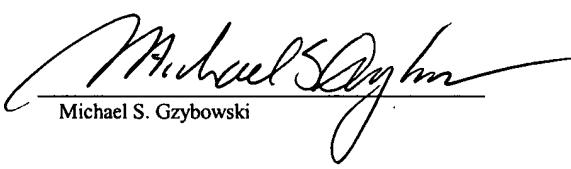
Applicant: Michael LAMBRIGHT

Invention: SPARE TIRE STORAGE APPARATUS

Serial No.: 10/612,254

Filed: July 2, 2003

Examiner: Gregory Adams

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}{ 1450
}{ on November 30, 2005
}{ Michael S. Gzybowski
}{ 

BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to Appellant's Notice of Appeal filed August 30, 2005 in connection with the above-identified application, appellant submits the present Brief on Appeal.

REAL PARTY IN INTEREST

Appellant has not assigned this application to entity and is therefore the real party in interest.

12/02/2005 MGBREM1 00000026 122136 10612254

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RELATED APPEALS AND INTERFERENCES

There are no related cases involved in any appeal procedures or Interferences.

STATUS OF CLAIMS

Claims 1-20 are pending in this application. Claims 1-20 stand under Final Rejection, from which rejection of claims 1-20 this appeal is taken. No other claims are pending.

STATUS OF AMENDMENTS

Three (3) Amendments After Final Rejection were filed in the application on June 20, 2005, July 26, 2005 and August 30, 2005. The Examiner has only allowed entry of the July 26, 2005 Amendments (in an Advisory Action mailed August 11, 2005. The Examiner stated that this entered Amendment “clarifies the rotational movement of the guide plates, but the previous rejection is affirmed as this does not materially change the invention as previously claimed.

SUMMARY OF INVENTION

The present invention is directed to a spare tire carrier for vehicles that allows access to a spare tire that is stored underneath a vehicle.

As discussed in paragraph [0020] of appellant's original specification, the spare tire carrier includes a support arm 2 which is pivotally attached to a vehicle frame by a cooperative tubular assembly 5. This is depicted in Figs. 1-3 in which reference number 8 is a mounting plate that is configured to be attached to the vehicle frame.

As discussed in paragraph [0022] of appellant's original specification, a tire mounting bracket 3 is provided on the support arm 2 (See Figs. 2 and 3).

As discussed in paragraphs [0024-0025] of appellant's original specification, the cooperating tubular assembly 5 includes a lower tubular element 6 and an upper tubular element 7. The main support arm 2 is depicted as being attached to the side of the lower tubular element 6 and the upper tubular element 7 is attached to mounting plate 8 for attachment to the vehicle frame.

As discussed in paragraph [0026] of appellant's original specification, lower guide plate 9 is attached to the top of the lower tubular element 6 and an upper guide plate 10 is attached to the bottom of the upper tubular element 7. The lower and upper guide plates 9, 10 are configured to have relative rotational movement between each other as discussed in reference to Figs. 6-8.

As discussed in paragraphs [0035-0037] of appellant's original specification, as the lower tubular element 6 pivots with respect to the upper tubular element 7 (from the stored position shown in Fig. 6), the angle at which the guide plates 9, 10 are attached, causes the main support arm 2 to simultaneously rotate about its own axis while the free end thereof moves in a downward direction.

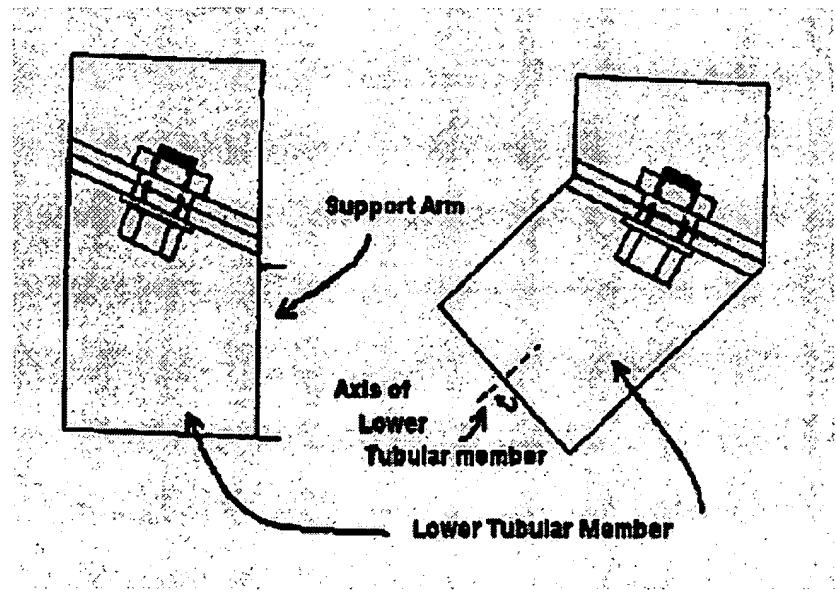
As the lower tubular element 6 continues to pivot with respect to the upper tubular element through an intermediate position shown in Fig. 7, tire 26 mounted on the main support arm 2 is no longer horizontal with its central axis being vertical. Rather, the central axis of the spare tire 26

mounted on the main support arm 2 is at an angle off the vertical and coming out of Fig. 7 at an inclined angle.

As the lower tubular element 6 continues to pivot with respect to the upper tubular element into the fully accessible position shown in Fig. 8, the central axis of the spare tire 26 mounted on the main support arm 2 is more vertically aligned than in the intermediate position depicted in Fig. 7. In this position, access to the spare tire 26 is such to allow the spare tire 26 to easily removed from (or remounted on) the main support arm 2.

Figure 5 depicts one manner in which the upper and lower guide plates 9, 10 are coupled together for relative rotational movement, using a threaded element 22 that passes through the upper and lower guide plates 9, 10.

Movement of the carrier as effected by rotation of the upper and lower guide plates 9, 10 was explained to the Examiner in an Amendment filed June 20, 2005 using a modification of Fig. 5 showing different positions produced by rotating the upper and lower guide plates about threaded element 22 as follows:



ISSUE

Whether claims 1-20 are anticipated under 35 U.S.C. §102(b) by Beavers.

GROUPING OF CLAIMS

Claims 1-20 stand collectively rejected under 35 U.S.C. §10b(a) as being unpatentable over Beavers and therefore stand or fall together under this rejection.

THE REFERENCES

The following references are relied upon by the Examiner:

U.S. 3,648,867

Beavers

Mar. 14, 1972

THE REJECTION

Claim 1-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Beavers.

ARGUMENT

Each of appellant's independent claims require, in part:

...cooperating tubular assembly including upper and lower opposed planar guide plates which are coupled together so as to allow for relative rotational movement of

said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates, whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly.

In the Final Rejection the Examiner stated:

Referring to FIGS. 1-4 Beavers discloses a spare tire carrier including support arm 21 and tubular assembly 21, 22, 23, 24 and 26.

Further in the Final Rejection the Examiner stated:

By way of further explanation, referring for FIG. 2, [shown in Office Action], Beavers '867 discloses an upper planar guide plate 26, 23 and a lower planar guide plate 24, 22 that are coupled together (col. 1, line 71). It is noted that a plane, i.e., planar, is defined by the X-Y plane, and rotational movement is about an X-axis which extends through the upper and lower planar guide plates. Further, it is noted that upper planar guide plate 26, 23 and lower planar guide plate 24, 22 rotate about an axis as shown in Beaver FIG. 5, to cause movement of the support arm.

In the Advisory Action mailed July 13, 2005 the Examiner stated:

With respect to claims 1 & 9, upper and lower plates are opposed to each other in that upper plate 26, 23 are above, i.e. opposite, lower plate 24, 22. Broadly construed, "opposed" comprises two objects adjacent each other. www.dictionary.com.

In Advisory Action mailed September 21, 2005 the Examiner stated:

Specifically, with respect to claim 1 and 9 upper and lower opposed plates Beavers '867 discloses opposed plates, i.e. adjacent, in which plate 26 is an upper plate and plate 23 is a lower plate.

Appellant independent claims require "opposed planar guide plates which are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates."

As originally conceded by the Examiner in the Final Rejection, Beavers teaches "tubular assembly 21, 22, 23, 24 and 26."

There appears to be no disagreement that the elements 21, 22 and 23 are tubular members as stated by Beavers. Element 24 is a stop that has a tubular shape and element 26 is a dust cap.

What the Examiner construes as "upper plates 26, 23" and "lower plates 24, 22" in Beavers are shown in Figs. 1 and 2 as follows:

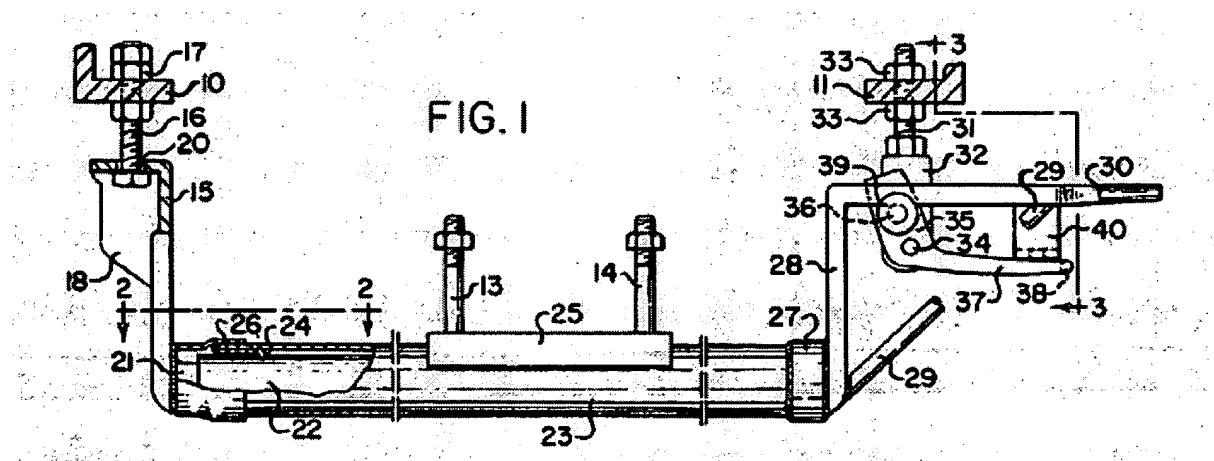
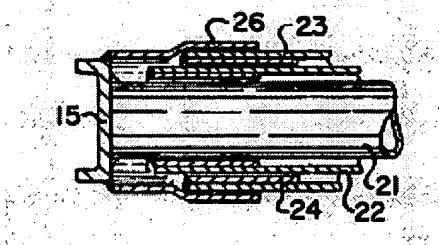


FIG. 2



As can be readily seen from Figs. 1 and 2 elements 22, 23, 24 and 26 are all tubular or cylindrical shaped structures.

It is submitted that elements 22, 23, 24 and 26 of Beavers cannot be constructed as physically being "opposed planar guide plates" as disclosed and claimed by appellant.

It seems that the only reasonable interpretation that the Examiner is giving appellant's limitation of "opposed planar guide plates" in relying upon Beavers is that the elements 22, 23, 24 and 26 of Beavers function to "guide" "planar" movement in Beavers.

Such an interpretation would be incorrect because elements 22, 23, 24 and 26 of Beavers are not even "plates."

Dictionary definitions of "plate" (from www.dictionary.com - used by the Examiner) include:

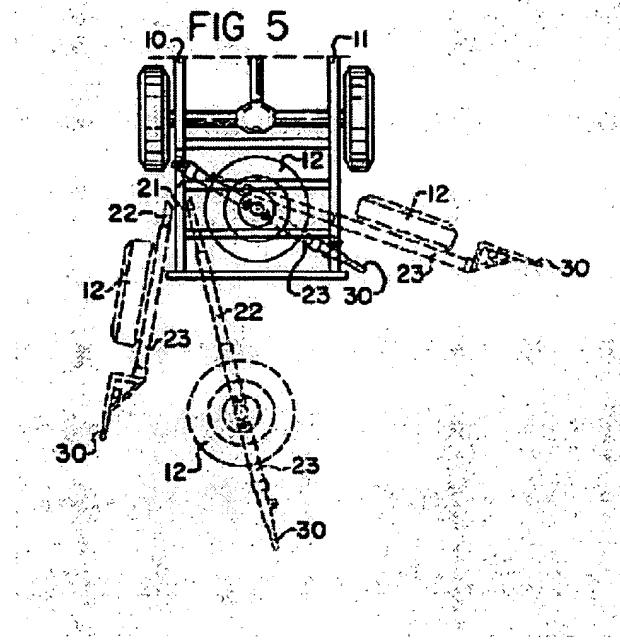
1. A smooth, flat, relatively thin, rigid body of uniform thickness.
2.
 - a. A sheet of hammered, rolled, or cast metal.
 - b. A very thin applied or deposited coat of metal.
3.
 - a. A flat piece of metal forming part of a machine: *a boiler plate*.
 - b. A flat piece of metal on which something is engraved.
 - c. A license plate.
4.
 - a. A thin piece of metal used for armor.
 - b. Armor made of such pieces.

None of these definitions encompass the tubular structures or elements of Beavers.

Moreover, it is noted that the tubular elements 22, 23, 24 and 26 of Beavers do not even "guide" the movement recited in appellant's independent claims.

Appellant's independent claims require that relative movement of the planar guide plates "causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly. "

In Beavers, tubular elements 22 and 23 are telescopic and thereby will allow for relative rotational movement about their common axis and extension as shown in Fig. 5:



However, the tubular elements 22 and 23 cannot be construed as "guiding" or in any way causing the central axis of the support arm to pivot with respect to the cooperative tubular assembly (which includes the "upper and lower opposed planar guide plates").

In this regard appellant's limitation of relative rotational movement of the upper and lower planar guide plates simultaneously causing "the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly" requires pivotal movement of the "central axis of the support arm" with respect to the "cooperative tubular assembly."

The Examiner has interpreted element 21 as being the support arm in Beavers.

However, as shown in Fig. 1 (above), tubular element 21 of Beavers is "welded or otherwise rigidly secured to the swivel bracket (See column 1, lines 74-75) so that tubular

element 21 of Beavers (the Examiner's "support arm") is not allowed to pivot about its central axis.

Rather, tubular element 21 of Beavers pivots with swivel bracket 21 about the axis of bolt 16.

It therefore, follows that even if the Examiner were construing and interpreting Beavers as teaching that the tubular elements 22, 23 and 24 function to "guide" "planar" movement in Beavers, such an interpretation would fail to anticipate the limitations of appellant's independent claims.

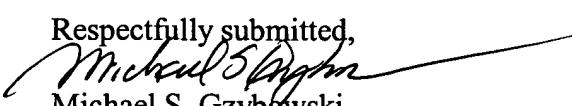
CONCLUSION

For the reasons advanced above, appellant respectfully contends that the rejection of claims 1-20 under 35 U.S.C. §102(b) as being anticipated by Beavers is improper because Beavers does not anticipate the limitations of appellant's claimed invention.

Reversal of the rejection on appeal is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



Michael S. Gzybowski

Reg. No. 32,816

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CLAIMS ON APPEAL

Claim 1 (Previously presented): A spare tire carrier for vehicles which comprises:

 a support arm for mounting a spare tire thereon, said support arm having a fixed end, a free end and a central axis; and

 a cooperating tubular assembly coupled to the fixed end of the support arm for mounting the support arm on a vehicle,

 said cooperating tubular assembly including upper and lower opposed planar guide plates which are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates, whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly.

Claim 2 (Original): A spare tire carrier for vehicles according to claim 1, wherein the cooperating tubular assembly comprises an upper tubular member to which the upper guide plate is attached and a lower tubular member to which the lower guide plate is attached.

Claim 3 (Original): A spare tire carrier for vehicles according to claim 2, wherein the upper and lower tubular members each have a central axis and the upper and lower guide plates are respectively attached to the upper and lower tubular members at an angle that is non-

perpendicular to the central axes of the upper and lower tubular members.

Claim 4 (Original): A spare tire carrier for vehicles according to claim 2, wherein the upper and lower tubular members are substantially collinear.

Claim 5 (Original): A spare tire carrier for vehicles according to claim 2, wherein at least one of the upper and lower tubular members is hollow.

Claim 6 (Original): A spare tire carrier for vehicles according to claim 2, wherein the upper and lower guide plates are coupled together about an axially central element that extends through at least one of the upper and lower guide plate.

Claim 7 (Original): A spare tire carrier for vehicles according to claim 6, wherein the axially central member comprises a threaded member.

Claim 8 (Original): A spare tire carrier for vehicles according to claim 1, further including a latch mechanism for engaging the free end of the support arm.

Claim 9 (Previously presented): A vehicle including a spare tire carrier mounted to an under side of the vehicle, which spare tire carrier comprises:

a support arm for mounting a spare tire thereon, said support arm having a fixed end and a free end and a central axis; and

a cooperating tubular assembly coupling the fixed end of the support arm to the under side of the vehicle,

said cooperating tubular assembly including upper and lower opposed planar guide plates which are coupled together so as to allow for relative rotational movement of said upper and lower opposed planar guide plates about a common axis which extends through the upper and lower guide plates, whereby relative rotational movement of the upper and lower guide plates about said common axis simultaneously causes the support arm to rotate about its central axis while pivoting the central axis of the support arm with respect to the cooperative tubular assembly.

Claim 10 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, wherein the cooperating tubular assembly comprises an upper tubular member to which the upper guide plate is attached and a lower tubular member to which the lower guide plate is attached.

Claim 11 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 10, wherein the upper and lower tubular members each have a central axis and the upper and lower guide plates are respectively attached to the upper and lower tubular members at an angle that is non-perpendicular to the central axes of the upper and lower tubular members.

Claim 12 (Original): A vehicle including a spare tire carrier mounted to an under side of the

vehicle according to claim 10, wherein the upper and lower tubular members are substantially collinear.

Claim 13 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 10, wherein at least one of the upper and lower tubular members is hollow.

Claim 14 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 10, wherein the upper and lower guide plates are coupled together about an axially central element that extends through at least one of the upper and lower guide plate.

Claim 15 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 14, wherein the axially central member comprises a threaded member.

Claim 16 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, further including a latch mechanism for engaging the free end of the support arm.

Claim 17 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 16, wherein the free end of the support arm includes structure for the latch mechanism to engage.

Claim 18 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 9, wherein the vehicle comprises one of a motor vehicle and a non-motor vehicle.

Claim 19 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 18, wherein the vehicle comprises a towed vehicle.

Claim 20 (Original): A vehicle including a spare tire carrier mounted to an under side of the vehicle according to claim 19, wherein the vehicle comprises one of a camper and a trailer.

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